IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1357 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MUKESHKUMAR JETHALAL PREM

Appearance:

MR.U.R. BHATT A.G.P. for Petitioners

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/02/2001

ORAL JUDGEMENT

1. Rule. Mr. M.B. Gandhi, learned advocate waives service of rule on behalf of the respondent.

2. The Revisioners herein are the defendants in

Special Civil Suit No. 5580/99 pending before City Civil Court at Ahmedabad. The respondent who is working as a Sales Tax Officer herein preferred the said suit seeking relief in respect of correction of his date of birth in the official record. He raised contention in the suit that although his date of birth is 11th February, 1943 in the offical records, it is entered as 11th February, 1942 by error. According to him, he had moved the appropriate offices somewhere in 1973 for the purpose, and his request was granted by outward No. 5485/96 dt. 27th October, 1973. Directions were issued to make entry of the order in the service book and to change the date of birth dt. 11th February, 1942 to 11th February, 1943. The defendant came with a clean case of denial of the plaintiff having made representation or any order having been passed in favour of the plaintiff.

3. The plaintiff therefore tendered an application at Exh. 28 seeking indulgence of the Court directing the defendant to permit the plaintiff the inspection of the outward register and outward file in possession of the defendant. Further relief was sought in form of a direction on the defendant to produce the register before the Court. The application was moved on 8th November, 2000.

4. On 14th November, 2000 the Court passed an order directing the defendants to give proper inspection of the record in outward register and necessary entry tobe made by the plaintiff on or before 17th November, 2000. The Court further directed the defendant to produce the same on record of the Court on 17th November, 2000. While passing the said order the Court observed that nobody represented the defendants on the previous date as well as on 14th November, 2000 and therefore the order was passed ex-parte.

5. On 20th November, 2000 the defendants filed reply to the plaintiff's application Exh. 28 vide Exh. 31 contending that the service book still carries the birth date as 11th February, 1942. The plaintiff is not able to produce the relevant documents. It is contended that the record in question is not traceable being of 1973. It was urged that the Court may re-hear the application as the order passed on 14th November, 2000 was passed ex-parte.

6. On 7th December, 2000 the Court after hearing both the sides once again passed an order below Exh.28 itself observing that there is no reason for reviewing or making any alteration in the order dt. 14th November,

2000 which is confined to only production and inspection of documents and directed the defendants to produce the record on or before 18th December, 2000. Aggrieved by the said order the defendants have preferred this Revision Application under Section 115 of the Civil Procedure Code challenging the order passed below Exh. 28 in Civil Suit No. 5580/99 on 7th December, 2000.

7. A large number of contentions have been raised on behalf of the Revisioner by learned A.G.P. Mr.U.R.Bhatt. According to him the Court below has ignored the provision of Order 11, Rule 12, 14, 15. He submitted that if the impugned order is read, the Court has discussed merits of the plaintiff's case and if the discussion on merits is removed there is no other reasoning given by the Trial Court for directing inspection and production of the documents in question. He submitted that the defendants have come with clean hands that the documents fall within the category 'C' prescribed under the manual of office procedure and is destroyed after five years. The documents in question are therefore not in possession of the defendant and therefore the Court could not have directed the defendants to provide inspection to the plaintiff and further to produce documents in the Court. Mr. Bhatt submitted that the order has resulted into miscarriage of justice. The error committed by the Trial Court is patent and in light of the decisions rendered by various Courts the Revision may be entertained. In support of this submission Mr. Bhatt places reliances on following decisions:-

a. C. VELAYUDHAM PILLAI Vs. SUBRAMANIA PILLAI
(A.I.R. 1941 MADRAS 709)

b. M/s. J.S. CONSTRUCTION PVT LTD Vs. DAMODAR ROUT ,
(A.I.R. 1987 ORISSA 207)

c. GOPAL KRISHNAJI KETAR Vs. MOHAMED HAJI LATIF &
Ors.,(A.I.R. 1968 S.C.)

d. INDIAN PETROCHEMICALS CORPORATION Vs. GHANSHYAM
D. PATEL ,(2000 (1) G.L.R. 103)

7.1. Mr. Bhatt submitted that the service book which is the source to ascertain the date of birth is available and therefore the Court could not have directed production of the documents which do not conclusively decide the date of birth. He submitted that even according to the plaintiff requisite entry indicating his date of birth to be February 11, 1943 has been made and

that service book is before the Court wherein, in fact, the date of birth is indicated to be February 11, 1942. Mr. Bhatt therefore submitted that this is only an attempt to probe the record and make a fishing enquiry. The Court could not have acted as a handle for such investigation on the part of the plaintiff.

7.2. Mr. Bhatt submits that service book is signed every year by the employee concerned and the plaintiff is comming up for change in birth date after a long service of about twenty five years and therefore he urges to entertain this Revision Application.

8. Mr. Gandhi, learned advocate appearing for the Opponent submitted that there are two impugned orders passed by the Trial Court below application Exh. 28. The first order was passed on 14th November, 2000 which is not the subject matter of challenge before this Court. The second order that is passed on 7th December, 2000 which is subject matter of this revision, is only passed up on re-hearing the parties in form of a review which, though strictly not permissible under law, was done with consent of parties. Mr.Gandhi submitted that the order impugned does not decide a case as contemplated under Section 115 of Civil Proceedure Code. The order is purely inter-locutary in nature. He submitted that the case would fall squarely within the ambit of proviso to Section 115 of Civil Procedure Code and this revision therefore may not be entertained. According to Mr. Gandhi, the Trial is pending and by virtue of this order impugned no issue is decided and considering the limited scope of Revision Application the Revision Application may be rejected.

9. Having regard to the rival side contentions it may be noted at the outset that as rightly pointed by Mr. Gandhi,the revision, even if allowed, is not going to help the Revisioner as the order passed below Exh. 28 by the Trial Cout on 14th November, 2000 would still stand as that is not challenged byt he revisioner. The order impugned is more or less in the nature of a review sought from the Trial Court which the Trial Court has rejected. No submission is made regarding any jurisdictional error by the Trial Court while passing the order on 7th December, 2000 re-affirming the earlier order, rejecting the review after re-hearing. Without entering into the question whether such re-hearing / review could have been entertained by the Trial Court, this Court finds no merit in this Revision Application, for the reasons that would be recorded in the paragraphs to follow.

10. It was vehemently argued that the Trial Court while passing the impugned order dt. 7th December, 2000 has discussed merits of the plaintiff's case and has taken into consideration the date of birth indicated in the seniority list. The Identity card also indicates the date of birth as that of 1943 so on and so forth. It was vehemently argued that these aspects were irrelevant when the service book is available. Probably it is overlooked while arguing that these points were considered by the Trial Court to examine the requirement of proviso to Rule 13 of Order 11 of C.P.C. The Court is faced with a service book and a seniority list besides the Identity Card issued by the defendants which carry different dates. The plaintiff has come with a specific case that he had made a representation which was accepted and an order was passed accepting his representation for making necessary changes in the service book and that direction was issued by a specific outward number. The entire theory of representation and acceptance thereof is denied by the defendants. Under the circumstances the Trial Court was justified in directing production and allowing inspection which was necessary for arriving at a just conclusion.

11. So far as the contention regarding the defendants being not in possession of the documents in question is concerned , if the reply of Revisioner to the application is seen, all that is contended is that record of 1973 is at present not available. Thereafter, oral contentions are raised regarding the record falling under category 'C' of the manual of office procedure, and therefore having been destroyed, have been raised.This aspect has also been taken care of by the learned Judge while passing the impugned order the learned Judge has observed thus:-

"Without any prejudice to the generality of any contentions to be raised by the parties it is in the interest of justice that the Government should make necessary explanation as to what has happened to the real record which is demanded by the plaintiff. The Department is also duty bound to make explanation before the Court either by way of production of documents or by filing necessary affidavit clearly stating that record was destroyed in certain year".

12. In view of the above discussion the Court was justified in not accepting oral say of the record having been destroyed. Thus on merits also this Court finds no merit in the Revision.

13. Apart from this it is amply clear that the Court has mainly directed to provide inspection and to produce certain documents. The Court has not taken any decision finaly or otherwise on merits of the case. No issue can be said to have been decided. The order is purely of an inter-locutary nature. Assuming that the application for inspection and production was rejected the result would have been that the question in issue would have resulted in favour of the defendant. In light of the provisio to Clause 1 to sub Section 1 of Section 115, this Court is not expected to vary or reverse the impugned order as it cannot be said that if the order was passed in favour of the revisioner it would have finally disposed of the suit in favour of the revisioner.

14. In C. VELAYUDHAM PILLAI Vs. SUBRAMANIA PILLAI A.I.R. 1941 MADRAS 709,the question before the Court was whether a party cannot be asked to apply for and produce certified copy of Income Tax returns. The Court after considering the provisions of Income Tax Act particulary Section 54 observed that Income Tax returns are confidential documents which not even the authorities themself may disclose and therfore direction could not have been given.

15. In M/S. J.S. CONSTRUCTION PVT LTD Vs. DAMODAR ROUT A.I.R. 1987 ORISSA 207, it was observed that discovery of production of document can be allowed by Court if it is found that document would throw light on subject matter of the suit. As discussed above the plaintiff and defendant have controversy about change in date of birth. There is contradiction in the date of birth in the documents of the defendants namely service book, Identity card and seniority list and therefore in order to reach to the truth the Court was justified in asking for production. The decision therefore will not help the Revisioner.

16. In GOPAL KRISHNAJI KETKAR Vs. MOHAMED HAJI LATIF AND OTHERS A.I.R.1968 SC. 1413 provisions of Section 114 (g) and 103 of evidence Act were considered where it was held that if the party in possession of best evidence which would throw light on issue in controversy withholds the evidence, adverse interference against him will have to be drawn. The contention was that the plaintiff himself has certain documents which he is not producing and is calling upon the defendants to produce at this juncture. This Court is not required to examine this issue at this stage as it would touch the merits of the suit which is not the subject matter in this Revision Application.

17. Lastly Mr. Bhatt relied on INDIAN PETROCHEMICALS CORPORATION Vs. GHANSHYAM D. PATEL 2000 - (1) G.L.R.,the said decision was rendered in a Special Civil Application wherein it was observed that correction of date of birth in the service record is permissible when by mistake of some other person it is wrongly recorded and that application for the same has to be made within reasonable time. Here again this would not help the Revisioner as it touches the merits of the case which is not the subject matter.

18. For the foregoing reasons this Court finds no merit in the Revision Application.No jurisdictional error is indicated to have been committed. No case is indicated to have been decided as contemplated under Section 115 of Civil Procedure Code and therefore Revision Application must fail. The Revision Application is therefore dismissed. Rule discharged. No costs.

(A.L. DAVE,J.)

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